

EXHIBIT 1

PART 1

1 IN THE CIRCUIT COURT
2 OF JEFFERSON COUNTY, ALABAMA

3
4 PATRICK BAILEY,)
5 Plaintiff,)
6)

7 VS.) CIVIL ACTION NO:
8 MILTOPE CORPORATION) 2:05-cv-1061-MEF-DRB
9) DEPOSITION OF:
10 Defendant.) PATRICK BAILEY

11 S T I P U L A T I O N S

12 IT IS STIPULATED AND AGREED, by and
13 between the parties through their
14 respective counsel, that the deposition
15 of:

16 PATRICK BAILEY
17 may be taken before Alana Mize,
18 Commissioner and Notary Public, State at
19 Large, at the Law Offices of Johnston,
20 Barton, 1901 Sixth Avenue North,
21 Birmingham, Alabama 35203, on the 8th day
22 of September, 2006, commencing at
23 approximately 10:20 a.m.

Page 2

1 IT IS FURTHER STIPULATED AND AGREED
2 that the signature to and reading of the
3 deposition by the witness is waived, the
4 deposition to have the same force and
5 effect as if full compliance had been had
6 with all laws and rules of Court relating
7 to the taking of depositions.

8
9 IT IS FURTHER STIPULATED AND AGREED
10 that it shall not be necessary for any
11 objections to be made by counsel to any
12 questions, except as to form or leading
13 questions, and that counsel for the parties
14 may make objections and assign grounds at
15 the time of the trial, or at the time said
16 deposition is offered in evidence, or prior
17 thereto.

18 ***
19
20
21
22
23

Page 3

1 APPEARANCES
2
3 ON BEHALF OF THE PLAINTIFF:
4 Derrick Blythe
5 Attorney at Law
6 126 Marshall Street
7 Alexander City, Alabama 35010
8
9
10 ON BEHALF OF THE DEFENDANT:
11 Heather Lindsey
12 Attorney at Law
13 Johnston, Barton, Proctor, and Gale
14 1901 Sixth Avenue North, Ste 2900
15 Birmingham, Alabama 35203
16
17

18 ALSO APPEARING:
19 Edward F. Crowell
20
21
22
23

Page 4

1 EXAMINATION INDEX
2 PATRICK BAILEY
3 BY MS. LINDSEY 5
4
5
6

7 EXHIBIT INDEX
8 DEFENDANT'S MAR
9 1 31
10 2 53
11 3 87
12 4 170
13 5 171
14 6 177
15 7 189
16 8 178
17 9 185
18 10 193
19
20
21
22
23

Page 5

1 I, Alana Mize, a Court Reporter
2 of Birmingham, Alabama, and a Notary Public
3 for the State of Alabama at Large, acting
4 as Commissioner, certify that on this date,
5 pursuant to Rule 30 of the Alabama Rules of
6 Civil Procedure and the foregoing
7 stipulation of counsel, there came before
8 me Patrick Bailey on the 8th day of
9 September, 2006, at the law offices of
10 Johnston, Barton, Proctor, and Gale, 1901
11 Sixth Avenue North, Ste. 2900, Birmingham,
12 Alabama, 35203, commencing at approximately
13 10:20 a.m., witness in the above cause, for
14 oral examination, whereupon the following
15 proceedings were had:
16 PATRICK BAILEY,
17 being first duly sworn, was examined and
18 testified as follows:
19 EXAMINATION
20 BY MS. LINDSEY:
21 Q Mr. Bailey, I'm Heather Lindsey,
22 I represent Miltope Corporation. We met
23 just a few minutes ago, and I'm going to be

(Pages 6 to 9)

Page 6	Page 8
<p>1 asking you some questions today about the</p> <p>2 claims in the lawsuit that your lawyer</p> <p>3 filed on your behalf.</p> <p>4 A Yes.</p> <p>5 Q Have you ever been deposed</p> <p>6 before?</p> <p>7 A No.</p> <p>8 Q Let me just go over a few things</p> <p>9 that could be helpful to you as reminders.</p> <p>10 When you are responding to the questions,</p> <p>11 try to give a gesture, describe what you</p> <p>12 are doing so the court reporter can take</p> <p>13 down what you are trying to communicate.</p> <p>14 A Okay.</p> <p>15 Q Try to avoid saying uh-huh or</p> <p>16 huh-uh because it is hard for the court</p> <p>17 reporter --</p> <p>18 A Right.</p> <p>19 Q -- to take that down as a yes or</p> <p>20 a no and Derek and I will be confused later</p> <p>21 with the testimony. I will do my best to</p> <p>22 ask questions that are clear and</p> <p>23 understandable. If I have not asked a</p>	<p>1 correct?</p> <p>2 A In other litigation, do --</p> <p>3 Q Do you want me to rephrase that?</p> <p>4 A Yes, please.</p> <p>5 Q Have you ever sued or been sued?</p> <p>6 A Yes, I have.</p> <p>7 Q Would you identify those other</p> <p>8 occasions, please?</p> <p>9 A The time that I had sued was 15</p> <p>10 to 18 years ago when I was in college in a</p> <p>11 band, and we had a person that had hired us</p> <p>12 to play and did not pay us. So we sued to</p> <p>13 recover the moneys owed to recover.</p> <p>14 Q And you did not have to give a</p> <p>15 deposition in that case?</p> <p>16 A I don't recall, it was quite</p> <p>17 some time ago.</p> <p>18 Q Is there any other occasion</p> <p>19 where you have sued or been sued other than</p> <p>20 this case?</p> <p>21 A Yes.</p> <p>22 Q Tell me about that please.</p> <p>23 A A band that was being dissolved,</p>
Page 7	Page 9
<p>1 question that you understand, I am asking</p> <p>2 you to please tell me so I can rephrase it;</p> <p>3 is that fair?</p> <p>4 A That's fair.</p> <p>5 Q If you answer one of my</p> <p>6 questions, I'm going to assume that you did</p> <p>7 understand it, is that agreeable to you?</p> <p>8 A Yes.</p> <p>9 Q Are you on any medication today</p> <p>10 that would interfere with your ability to</p> <p>11 testify truthfully?</p> <p>12 A No.</p> <p>13 Q Any medication that would</p> <p>14 interfere with your memory?</p> <p>15 A No, I'm taking Naproxin for this</p> <p>16 knee surgery that I had. It can make me</p> <p>17 drowsy, but it won't make me incoherent.</p> <p>18 Q Is it a pain medication?</p> <p>19 A No, it's for inflammation.</p> <p>20 Q I understand from the responses</p> <p>21 that you have provided in the form of</p> <p>22 interrogatory answers that you have been</p> <p>23 involved in other litigation; is that</p>	<p>1 we had disagreements over equipment and</p> <p>2 things that people owned personally and the</p> <p>3 band owned, and we had to -- I was sued</p> <p>4 then but we got that all settled.</p> <p>5 Q When was this?</p> <p>6 A 12 years ago I would guess.</p> <p>7 Q Who was the party that sued you?</p> <p>8 A Johnathan Bloom.</p> <p>9 Q And you and Johnathan were</p> <p>10 members of the same band at that time?</p> <p>11 A Yes.</p> <p>12 Q Any other occasions other than</p> <p>13 your divorce and this case where you have</p> <p>14 been a party to a lawsuit?</p> <p>15 A No.</p> <p>16 Q And you were divorced about six</p> <p>17 years ago?</p> <p>18 A 2001 I believe, yes.</p> <p>19 Q And her name is -- is it still</p> <p>20 Malissa Bailey?</p> <p>21 A Yes.</p> <p>22 Q And is that M-a-l-i-s-s-a?</p> <p>23 A Correct.</p>

Page 10

1 Q One thing I forgot to say, if at
2 any time you would like to take a break,
3 feel free to do that. All I ask is that
4 you finish your answer to the question that
5 is pending if you need to take a break, use
6 the restroom, or get a coke or consult with
7 your lawyer?
8 A All right.
9 Q You and Malissa have a child; is
10 that correct?
11 A Correct.
12 Q Her name is Sydney, S-y-d --
13 A -- n-e-y.
14 Q Any other children?
15 A No.
16 Q You currently reside with Sydney
17 and your father Lisenby Bailey; is that
18 correct?
19 A That's correct.
20 Q And you, your father, and your
21 daughter have resided together since before
22 the time you were employed at Miltope in
23 2001; is that correct?

Page 11

1 A Around that time.
2 Q Did you have a time where you
3 were not living with your father in the
4 last ten years?
5 A Yes.
6 Q When did that change?
7 A That changed after my father had
8 had a stroke.
9 Q And when did he have a stroke?
10 A I believe that would have been
11 in -- it was about '96, '97, right around
12 in there.
13 Q Could it have been as late at
14 '98?
15 A It's possible, I would -- I
16 would really need to look at the --
17 Q I would too.
18 A It's hard to remember that.
19 Q Let me see if I can help you
20 though, you were employed at Miltope in '96
21 and '97; is that correct?
22 A Yes.
23 Q Did your father have his stroke

Page 12

1 while you were at --
2 A After that.
3 Q It was after that time of
4 employment?
5 A Correct.
6 Q Okay. And when he had his
7 stroke, you say that he then moved in with
8 you; is that correct?
9 A No, my ex-wife and I sold our
10 house and moved in with him, that was the
11 easiest solution to that. We were living
12 in a two bedroom house, it would have been
13 difficult to do that.
14 Q So at that point you and your
15 wife and your daughter, Sydney, moved in
16 with your father?
17 A Correct.
18 Q And since that time you and your
19 wife divorced; correct?
20 A Yes.
21 Q And she moved out?
22 A Right.
23 Q Has there been any other change

Page 13

1 in terms of who have resided with you or
2 where you have resided other than what we
3 have described?
4 A My fiance and her daughter moved
5 in a few months ago.
6 Q What's your fiance's name?
7 A Sheila, S-h-e-l-i-a, Cox.
8 Q And what's her daughter's name?
9 A Meagan.
10 Q How old is her daughter?
11 A 17.
12 Q How old is your daughter?
13 A Nine.
14 Q And do you and Sheila have a
15 wedding date?
16 A We're engaged, but we haven't
17 set the date yet.
18 Q So Sheila and Meagan have lived
19 with you for the last couple of months I
20 believe you said?
21 A Yes.
22 Q Has any other person resided
23 with you and your father in the last eight

(Pages 14 to 17)

5

Page 14

1 years other than what you have described?
 2 A No, well, I mean my ex-wife, who
 3 was my wife at the time we moved, lived
 4 there.
 5 Q Right.
 6 A She and I have not been divorced
 7 eight years so --
 8 Q Since we already covered that, I
 9 didn't need to cover it again.
 10 A Right.
 11 Q Have you spoken with Sheila
 12 about the claims you have asserted against
 13 Miltope in this case?
 14 A Not in great detail, I mean, you
 15 know, where are you going today and that,
 16 you know.
 17 Q Have you talked about the
 18 circumstances that led to the end of your
 19 employment at Miltope with her?
 20 A We do talk, I mean, I'm sure
 21 that we have talked about that before.
 22 Q Going back to the band that
 23 dissolved, what was the name of that band

Page 15

1 in which Johnathan Bloom had sued you?
 2 A Joshua Stone.
 3 Q And currently you're in a band?
 4 A Right.
 5 Q What's the name of that band?
 6 A The Cold Hard Truth.
 7 Q And have you also been a member
 8 of a band called the Rat Race?
 9 A Yes.
 10 Q Are you still a member of that
 11 band?
 12 A Those three bands are all the
 13 same band.
 14 Q When you say three, are you
 15 referring back to Joshua Stone as well?
 16 A No, McQueen Street that you are
 17 about to get to.
 18 Q McQueen Street, The Rat Race,
 19 and The Cold Hard Truth is all the same
 20 band, is that what your testimony is?
 21 A Now.
 22 Q When you say that, do you mean
 23 it is the same people who are the

Page 16

1 musicians?
 2 A No.
 3 Q Within these bands?
 4 A No, they are --
 5 Q There was a time that that was
 6 different?
 7 A Yes.
 8 Q Describe that please.
 9 A The different date you would
 10 probably be referring to is the 19th of
 11 November of 2003, we did a reunion show in
 12 Montgomery, Alabama on that date. That was
 13 the only time that that band played as
 14 those four individuals.
 15 Q So --
 16 A There was not an ongoing project
 17 for a band or anything at that time. The
 18 next time that that band played was
 19 probably four years later for a benefit for
 20 a gentleman named Lance Lisenby, who had
 21 lost his arm in an accident with a train,
 22 that we did as a benefit. That is not an
 23 up and living, breathing band.

Page 17

1 Q You have just given me a lot of
 2 information, so I will have to go back over
 3 it.
 4 A Okay. I will be glad to
 5 clarify.
 6 Q Because I'm not -- you said on
 7 19 November 2003 you did a reunion --
 8 McQueen Street did a reunion show?
 9 A Right.
 10 Q And when you say reunion show,
 11 there was a time in the past these men were
 12 part of the same band?
 13 A Not myself, I was taking the
 14 place of someone who had passed away.
 15 Q Who was the person who had
 16 passed away?
 17 A Chris Welsh.
 18 Q Is that the --
 19 A The singer.
 20 Q The son?
 21 A The singer, brother of the
 22 singer.
 23 Q Singer is Derek or --

Page 18

1 A Yes.
 2 Q Derek Welsh, and that's
 3 D-e-r-e-k?
 4 A Correct.
 5 Q And you do back up vocals;
 6 right? Did you also do some singing in
 7 this band?
 8 A Yes, I do.
 9 Q And you're also the drummer?
 10 A Right.
 11 Q And how did you meet Derek
 12 Welsh?
 13 A I played in the Rat Race with
 14 Derek Welsh prior to working at Miltope the
 15 first time.
 16 Q Who else was in the Rat Race
 17 with you and Derek during that earlier time
 18 period?
 19 A Lance Lisenby, the gentleman
 20 that was involved in the accident in
 21 Montgomery, and Richard Hatcher.
 22 Q And Richard Hatcher is still a
 23 member of your current band; right?

Page 19

1 A No, no.
 2 Q Where is Richard now?
 3 A Mobile or Pensacola I think.
 4 Q Who took his place?
 5 A Chris Lilly.
 6 Q Was Richard Hatcher a member of
 7 the band that played the reunion show in
 8 2003?
 9 A Yes.
 10 Q And was Lance Lisenby also a
 11 member of that reunion band?
 12 A Yes.
 13 Q Derek Welsh was a member of that
 14 reunion band?
 15 A Yes.
 16 Q Who was the fourth member?
 17 A Michael Cummings.
 18 Q And what is Michael doing today
 19 if you know?
 20 A He lives in Atlanta, Georgia, he
 21 teaches guitar.
 22 Q And is he not a member of your
 23 current band?

Page 20

1 A No, if you would like I would
 2 draw you a diagram of this thing, that
 3 would probably make it much easier to
 4 understand.
 5 Q We'll see. I hate to put you to
 6 that trouble. And Lance Lisenby was
 7 involved in an accident with a train which
 8 resulted in the loss of his arm; right?
 9 A Correct.
 10 Q Earlier in your testimony you
 11 said that the McQueen Street reunion show
 12 is not an ongoing project, is that what you
 13 meant?
 14 A Yes, now -- okay. Sorry.
 15 Q There were some preliminary
 16 contacts, negotiations, and practices
 17 before that show; correct?
 18 A Yes, it was necessary to be able
 19 to play the show since I had never played
 20 with the band before.
 21 Q I would think I would want to
 22 practice if I were you. But you had played
 23 in many bands throughout your adult life;

Page 21

1 right?
 2 A Yes.
 3 Q In fact, do you consider your
 4 primary occupation musician?
 5 A Not at the moment.
 6 Q Why not?
 7 A Because I have a lot of
 8 responsibility at home that I have to take
 9 care of, and it does not allow me to travel
 10 the required amount of time that I would
 11 need to put into that to be a full-time
 12 musician. I can't do that.
 13 Q Is there travel that Derek Welsh
 14 is engaging in that you're not involved in
 15 with him?
 16 A Right now?
 17 Q Yes.
 18 A There is not travel involved
 19 with what I do with Derek now.
 20 Q Right.
 21 A However it is planned out well
 22 in advance, and it's not a -- we got to
 23 go -- I have too many things, too many

(Pages 22 to 25)

7

Page 22

1 bases to cover to be able to go at the drop
2 of the hat. I have to plan everything out.

3 **Q I would think so.**

4 **A Exactly.**

5 **Q With your daughter and your
6 father; right?**

7 **A Right**

8 **Q Now I have looked at your web
9 site, and it seems like your band is fairly
10 successful, is that a fair statement?**

11 **A Which band?**

12 **Q Well, you say they are all the
13 same, The Cold Hard Truth being the current
14 evolution?**

15 **A If I could have -- if I could
16 just kind of give you a brief overview of
17 that, could I do -- is that --**

18 **Q Sure --**

19 **A Speak freely --**

20 **Q -- be glad to hear that.**

21 **A McQueen Street was a band that
22 was successful in the late '80's, early
23 '90's.**

Page 23

1 **Q Uh-huh.**

2 **A They wound up with some record
3 company problems somehow or another and
4 they were put on a back burner and phased
5 out. A few years after that, the drummer,
6 who is Derek's brother, Chris passed away.
7 Derek had started another band called the
8 Rat Race. A friend of mine played in that
9 band. And when he left the band, he asked
10 if I could have an audition for that band
11 because we were good friends. I auditioned
12 for the band, and we had a fairly
13 successful band. That was The Rat Race and
14 McQueen Street was finished at that point.**

15 **All right. The Rat Race -- I
16 told Derek when I joined the Rat Race that
17 we'd give it a year and see how it went.
18 And I stayed in the band right at a year, I
19 was married. I wanted to start a family
20 and that kind of thing, but I had hoped
21 that would you know have some success.**

22 **And true to my word, a year
23 later I said it is time for me to go. I**

Page 24

1 did what I came to do, you know, we tried.
2 We did a CD and that kind of thing.

3 **After that I went to work at
4 Miltope. Now I was finished with The Rat
5 Race, and I was finished doing anything
6 like that. And I dedicated myself to my
7 family, to my job. I did everything I
8 could do to kind of really tackle the world
9 that I wasn't used to.**

10 **And then when everything -- you
11 know, Derek had called me and said we're
12 going to do this McQueen Street show, and I
13 want you to play drums and it was an honor
14 for me for him to ask me to play the drums
15 his brother played for that band. And I
16 had gone and seen them and, you know,
17 idolized them because I was not on their
18 level at that time. So it was an honor for
19 me and kind of -- with everything that was
20 going on, it was kind of an escape for me
21 that I could -- that I could go do this and
22 kind of get my mind -- you know, I had
23 everything taken care of as far as things**

Page 25

1 at home and stuff like that.

2 **I had everything taken care of
3 to go play one night with this band and a
4 few practices. But in no way, form, or
5 fashion did playing one night with that
6 band or anything have anything to do with
7 me requesting family medical leave.
8 Nothing to do with that.**

9 **Q Did someone accuse you of that?**

10 **A No, but I -- I had thought about
11 this and I knew in my heart that that's
12 what it was going to look like and that's
13 just so not true.**

14 **Q You felt it would look that way
15 because you looked at the circumstances and
16 perceived it that way?**

17 **A No, I felt it looked that way
18 after going through the paperwork that you
19 showed us in here, that's what I got from
20 that. There are emails from Derek.**

21 **Q Are you talking about this
22 morning?**

23 **A Yes.**

Page 26

Page 28

1 **Q** Before you came in here this
2 morning, did you have that same concern
3 that you just voiced that this -- that
4 somehow there would be the appearance that
5 you wanted the leave to pursue your dreams
6 in the band?

7 **A** Somewhat.

8 **Q** But no one accused you of that?

9 **A** Not openly.

10 **Q** When you say not openly, was
11 there some indirect communication you are
12 thinking of?

13 **A** I don't know what made me feel
14 that way, I really don't. It just -- I
15 felt that and I had hoped that that was not
16 it. And I begged for somebody to tell me
17 why everything went like it did.

18 **Q** We'll get into that.

19 **A** And I couldn't get anyone to
20 tell me.

21 **Q** At that point it is easier in
22 terms of the -- I appreciate you giving me
23 that background, but it is easier to go

1 it.

2 **Q** You said also earlier that you
3 were introduced to Derek through a friend
4 of yours, I think, that used to be in The
5 Rat Race?

6 **A** No, I was -- I was considered
7 for the drumming job because of a friend.

8 **Q** I got you. And that was some
9 ten years ago that we're talking about;
10 right?

11 **A** A lot longer than that ago seems
12 like, yeah -- hold on, yes.

13 **Q** It was after Chris --

14 **A** It would have been '95 around
15 '96.

16 **Q** Okay. and who was that friend?

17 **A** Tony McCarty.

18 **Q** What is Tony doing now?

19 **A** Tony works for Carol's Carpets
20 in Montgomery, Alabama.

21 **Q** Y'all still good friends?

22 **A** Yes.

23 **Q** Have you talked with him about

Page 27

Page 29

1 question and answer so that we'll
2 understand --

3 **A** Correct.

4 **Q** -- your story, and I won't have
5 to keep going back and ask you follow up
6 questions. So let's hold this a piece if
7 you don't mind.

8 **A** Can we take a small break,
9 please?

10 **Q** Sure.

11 (A short recess was taken.)

12 **Q** (By Ms. Lindsey) So we're back
13 on the record. When you were describing
14 for me the genesis of your being in The
15 Cold Hard Truth now, you said that Derek
16 came to you to be drummer and that was an
17 honor for you. Do you remember that
18 testimony?

19 **A** Yes.

20 **Q** Do you remember about when that
21 occurred that Derek approached you?

22 **A** It was in -- I think it was in
23 October of that year he'd asked me about

1 getting a job where he works?

2 **A** Where Tony works?

3 **Q** Uh-huh.

4 **A** No.

5 **Q** Before you were involved with --
6 Joshua Stone was that your first band?

7 **A** No, my first band was when I was
8 in the 7th grade, but Joshua Stone was not
9 my first band.

10 **Q** Were you playing drums back
11 then?

12 **A** In Joshua Stone?

13 **Q** In the 7th grade?

14 **A** Yes.

15 **Q** So the drums, that has always
16 been your instrument; is that right?

17 **A** Music pretty much in general.

18 **Q** Do you play other instruments as
19 well?

20 **A** Yes.

21 **Q** What else do you play?

22 **A** Guitar, bass.

23 **Q** What type, bass?

(Pages 30 to 33)

9

Page 30

1 A No, guitar, bass, trumpet.
 2 Q Were you in the school band when
 3 you were growing up?
 4 A Yes.
 5 Q Do you come from a musical
 6 family?
 7 A Yes.
 8 Q Did your dad play, does he play?
 9 A Yes.
 10 Q What about your mother?
 11 A He doesn't now but he did. He
 12 taught me how to play guitar. My mother
 13 played guitar also.
 14 Q Did they ever play in a band?
 15 A My dad did before he joined the
 16 Marine Corps but not -- not like I do.
 17 Q And do you have any brothers or
 18 sisters?
 19 A No.
 20 Q So it probably has been
 21 difficult as an only child to be the sole
 22 care giver for your father in these years?
 23 A Sometimes it is difficult, I

Page 31

1 can't kid you about that. Yes, it is.
 2 Q And you lost your mother before
 3 your father had his stroke?
 4 A Yes.
 5 Q And how did she die?
 6 A She had esophageal cancer
 7 Q I wanted to show you what I
 8 found on the McQueen Street web site. It
 9 is four pages that we can mark as an
 10 exhibit if we need to, it's what I
 11 understand to be the news release section
 12 of the web site. And it appears to me that
 13 it details sort of a chronology of what the
 14 band, under all of it's different names,
 15 has been doing. Does that look familiar to
 16 you?
 17 (Defendant's Exhibit 1
 18 was marked
 19 for identification.)
 19 A Yes, I have seen this.
 20 Q Do you participate at all in the
 21 creation of that web site or updating it?
 22 A No, I do not.
 23 Q Who does that?

Page 32

1 A Derek Welsh.
 2 Q Have you seen any inaccuracy
 3 from the web site that Derek updates or
 4 anything that makes you think, hey, this
 5 isn't what we have been doing, this isn't
 6 right, any mistakes?
 7 MR. BLYTHE: Take your time.
 8 Q (By Ms. Lindsey) Feel free, take
 9 your time, it is four pages, and read it.
 10 A I'm going to start from the
 11 beginning, which will be the end. I found
 12 an inaccuracy in my testimony.
 13 Q Okay.
 14 A It was the 29th, not the 19th,
 15 right.
 16 Q 29th of November, that was the
 17 reunion show?
 18 A Right.
 19 Q Okay. Is there anything
 20 inaccurate in this series of four pages
 21 that you just looked at?
 22 A I wouldn't use the word
 23 inaccurate, I would use the word hype.

Page 33

1 Q Hype?
 2 A Yes.
 3 Q Does it accurately reflect the
 4 date of performances as far as you know?
 5 A There were no cities added, in
 6 there that you see on there -- look on --
 7 let me see that one more time, please.
 8 Q Sure.
 9 A On this December 5th entry.
 10 Q Uh-huh.
 11 A It says announcements, there
 12 will be performances in various cities.
 13 Q Is that 2003 that you are
 14 referring to?
 15 A Yes, I am.
 16 Q And so that announcement is
 17 inaccurate, in hindsight that --
 18 A It's in accurate at this time.
 19 Q At the time that was the
 20 intention?
 21 A No, I -- the intention of this,
 22 Derek wanted to -- like I said, it is
 23 hype. If, you know, it had worked out or

Page 34

1 he had seen that he could do that or we
2 could do that maybe we would have done
3 that.

4 **Q Uh-huh.**

5 **A** But Mr. Welsh also has an
6 on-line store.

7 **Q Uh-huh.**

8 **A** And which he gets 100 percent of
9 the profit from that and I have zero
10 percent interest in that. So anything that
11 he could do to stir interest would probably
12 benefit him and not myself so --

13 **Q Anything he could do to do to
14 what?**

15 **A** Anything he could do financially
16 is just like advertising.

17 **Q I hear you.**

18 **A** He was trying to stir up some
19 buzz about the band and that kind of thing
20 and hopefully that it would probably
21 increase sales on his online store. As far
22 as me having any interest in that, I do
23 not. And I mean interest like financial

Page 35

1 interest, not would I be interested in it.

2 **Q You have been paid though for
3 your participation in the band?**

4 **A** That -- and this is like --
5 would you clarify that?

6 **Q Well --**

7 **A** The --

8 **Q Have you been working?**

9 **A** The November 29th show or --

10 **Q Let me just ask a general
11 question and if you need to help me out you
12 can do that. Your work with Derek Welsh
13 and these various evolutions of these
14 bands, have you been doing this as a hobby
15 for free or have you been doing this and
16 earning some income?**

17 **A** The first two -- excuse me, let
18 me clarify even better. Strike that -- can
19 I use that too?

20 **Q Sure.**

21 **A** The McQueen Street shows my
22 expenses were covered as far as gas and
23 things of that nature.

Page 36

1 **Q Uh-huh.**

2 **A** The second McQueen Street show
3 was a benefit for a dear friend and was
4 total donation of time and effort and
5 everything. So, no, I did not receive any
6 compensation whatsoever for these two
7 shows.

8 **Q Is it your testimony that you
9 haven't received compensation at all for
10 the work you have done with Derek Welsh in
11 the last three years?**

12 **A** No, it is my testimony that
13 those two shows -- the one in -- could I
14 see that one more time please to get the
15 dates exactly right?

16 **Q Sure. I do apologize for the --
17 would you like me to make an extra copy so
18 we could look at that together?**

19 **A** You could, that would be fine.

20 **Q I'm getting that you might want
21 to go through them one by one and talk to
22 me. Is that what you were about to make me
23 a list of?**

Page 37

1 **A** We could do that.

2 **Q Okay. I will be right back.**
3 (A short recess was taken.)

4 **Q (By Ms. Lindsey) Okay. So we're
5 back on the record. And why don't we take
6 this one by one so that we can -- it might
7 be simpler.**

8 **A** Okay.

9 **Q In terms of whether you received
10 any compensation beyond coverage of
11 expenses for each thing.**

12 **A** It will be -- how far down the
13 line does this need to be pertinent? How
14 far -- I mean obviously we're around
15 November 2003 until when?

16 **Q Well, I was going to ask you
17 about currently --**

18 **A** Currently.

19 **Q -- because I'm trying to get
20 into information about your income.**

21 **A** Currently I do receive
22 compensation.

23 **Q Okay. And when did that begin?**

(Pages 38 to 41)

11

Page 38

1 A When the -- when we became The
2 Cold Hard Truth, when that name surfaced.
3 Q And are y'all incorporated under
4 that name, or is is that just a name you
5 are using? How does that work?
6 A I am -- I am paid just like -- I
7 get a set amount of money per night I play,
8 which is never more than two times a week.
9 Q And how long have you been
10 playing approximately two times a week for
11 The Cold Hard Truth?
12 A The past -- I'd have to look at
13 The Cold Hard Truth web site to see.
14 Q Okay. Let's look on here. It
15 should say something.
16 A Cold Hard Truth in Auburn,
17 McQueen Street members.
18 Q George --
19 A December 7th, '05.
20 Q Uh-huh.
21 A It says McQueen Street members
22 to perform live.
23 Q Right.

Page 39

1 A Okay. The band, The Cold Hard
2 Truth, the first live performance will be
3 in Montgomery, Friday, December 16th at Off
4 The Wagon, okay. The first show, that was
5 it. We played as the Cold Hard Truth and
6 after that, I guess you would say that that
7 night -- I didn't even like really start
8 getting paid until after that show so since
9 that date I would say --
10 Q Do you get paid the same per
11 show?
12 A Yes.
13 Q What is that amount that you get
14 paid?
15 A \$250 per show.
16 Q How many sets do you play?
17 A How many sets do I play?
18 Q Uh-huh.
19 A Two.
20 Q Is George Jones upset about
21 y'all's new name?
22 A No, no.
23 Q It's a good song.

Page 40

1 A Not that I'm aware of I should
2 say.
3 Q Okay. Now there is a reference
4 May 17th, 2006 at the top of this page one
5 of Exhibit 1 the Rat Race to perform live,
6 do you see that?
7 A Yes.
8 Q And you are listed as a band
9 member?
10 A Correct.
11 Q And it appears that you were
12 listed as a person who will be playing on
13 June 26th, 2006; is that correct?
14 A Yes.
15 Q And this was the concert that
16 was for Lance's benefit?
17 A No, Lance played at that.
18 Q Oh, good for him.
19 A Played keyboard and that's why
20 we did that, we wanted to get him out
21 playing in the band he started.
22 Q And did you get paid \$250 that
23 day or shortly thereafter?

Page 41

1 A I think, yes.
2 Q Earlier you testified about the
3 concert to aide Lance Lisenby -- is that
4 the way to pronounce his name?
5 A Correct.
6 Q And it appears from this
7 particular exhibit that was on Friday,
8 March 4th. It's referenced on this page
9 one underneath the January 29th --
10 A Right.
11 Q -- heading; is that correct?
12 A Right.
13 Q And this is the concert you're
14 referring to where you did not receive
15 compensation because it was for Lance's
16 benefit; is that correct?
17 A Yes, that is correct.
18 Q Earlier a believe you said that
19 The Cold Hard Truth plays approximately
20 twice a week; is that correct?
21 A Yes.
22 Q Does The Rat Race perform
23 regularly as well now?

Page 42	Page 44
<p>1 A It says it right here, it is all</p> <p>2 just like it is exactly.</p> <p>3 Q Tell me.</p> <p>4 A The dates -- as far as us</p> <p>5 playing The Cold Hard Truth show was the</p> <p>6 first Cold Hard Truth show. And you see</p> <p>7 down here (indicating), the McQueen Street</p> <p>8 to perform live for Lance Lisenby. The</p> <p>9 other show that was done was the McQueen</p> <p>10 Street show that was on November 29th,</p> <p>11 other than that there have been no McQueen</p> <p>12 Street shows, no Rat Race shows other than</p> <p>13 the ones listed on there. As far as it has</p> <p>14 the ones that actually happened there was a</p> <p>15 reference to some that might happen but the</p> <p>16 one that it says it happened, the McQueen</p> <p>17 Street shows and one Rat Race show.</p> <p>18 Q Do you receive any royalties or</p> <p>19 compensation for purchase of CDs?</p> <p>20 A None whatsoever.</p> <p>21 Q Have you tried to negotiate with</p> <p>22 Derek to try to get some money out of that?</p> <p>23 A No.</p>	<p>1 A No.</p> <p>2 Q Your answer just a minute ago</p> <p>3 just confused me. Have you ever been</p> <p>4 involved in the production of a CD that has</p> <p>5 your name where you're given some sort of</p> <p>6 credit but you're not actually playing?</p> <p>7 A One.</p> <p>8 Q Which one was that?</p> <p>9 A I think I got some partial</p> <p>10 writing credit for a song.</p> <p>11 Q What was that song?</p> <p>12 A He changed the name of it. I</p> <p>13 think it's called, "That's My Family."</p> <p>14 Q And when you're referring to he,</p> <p>15 who is that?</p> <p>16 A Johnathan Bloom.</p> <p>17 Q That was the person who you were</p> <p>18 involved in a lawsuit with; right?</p> <p>19 A Correct.</p> <p>20 Q Over Joshua Stone?</p> <p>21 A Correct.</p> <p>22 Q Okay.</p> <p>23 A But there were no disagreements</p>
Page 43	Page 45
<p>1 Q Do you feel like that's unfair</p> <p>2 that you don't get any compensation at all</p> <p>3 for the sale of CD's that contain your</p> <p>4 work?</p> <p>5 A The only CD out of all of this</p> <p>6 that I played on was one of the Rat Race</p> <p>7 CD's. Sometimes I look at that as that was</p> <p>8 a life long accomplishment in music to</p> <p>9 actually -- I went and purchased a CD</p> <p>10 player after that because I said I wouldn't</p> <p>11 buy one until I played on one.</p> <p>12 Q So that's the first CD that your</p> <p>13 music is on in terms of a CD that's --</p> <p>14 A That I'm playing on.</p> <p>15 Q -- sold to the public; right?</p> <p>16 And are you on other CD's that are for sale</p> <p>17 to the public?</p> <p>18 A Playing?</p> <p>19 Q Yes.</p> <p>20 A No.</p> <p>21 Q Do you have other roles on CD's</p> <p>22 that are for sale to the public other than</p> <p>23 playing?</p>	<p>1 whatsoever over the writing credit or</p> <p>2 anything of that nature, we have never had</p> <p>3 a even a conversation about that.</p> <p>4 Q And did you receive any</p> <p>5 compensation as a result of the writing</p> <p>6 credit you received on that CD?</p> <p>7 A No.</p> <p>8 Q Did you try to negotiate with</p> <p>9 Johnathan to receive some compensation?</p> <p>10 A I think in the paperwork he sent</p> <p>11 in I was supposed get a percentage per</p> <p>12 sale, but I don't think he ever sold enough</p> <p>13 of them for it to amount to anything to</p> <p>14 pursue. So, no, we have talked about it</p> <p>15 but never anything about it.</p> <p>16 Q Are y'all friends now?</p> <p>17 A We speak, kind of hard to, but</p> <p>18 you know --</p> <p>19 Q So if I understand you</p> <p>20 correctly, you do receive income for</p> <p>21 purposes of your playing with The Cold Hard</p> <p>22 Truth?</p> <p>23 A Correct.</p>

(Pages 46 to 49)

13

Page 46

Page 48

1 **Q And that's been happening for**
 2 **approximately eight months since**
 3 **approximately December of '05; right?**

4 **A Right.**

5 **Q Do you have any other income**
 6 **sources?**

7 **A No.**

8 **Q Do you tutor children for music?**

9 **A I taught lessons for a while but**
 10 **just to a couple of people not anything --**

11 **Q I noticed on your calendar a**
 12 **reference to a person named Nicki, is she**
 13 **one of your students?**

14 **A Her name is -- I don't know what**
 15 **her last name is, she has married since**
 16 **then.**

17 **Q You listed several appointments**
 18 **with her. What instrument were you**
 19 **teaching her to play?**

20 **A Drums.**

21 **Q Is she a good student?**

22 **A She has more talent than the one**
 23 **that actually played in the band that I was**

1 and a half with her instead of chopping her
 2 off at an hour, that's why I wouldn't be a
 3 good teacher because that's what I want. I
 4 want people to learn.

5 **Q That sounds like a definition of**
 6 **a great teacher.**

7 **A I wouldn't be financially**
 8 **successful with it because I would spend**
 9 **too much time. They have to learn too,**
 10 **they have to teach themselves some too.**

11 **Q If I understand your history,**
 12 **you are very skilled and talented as a**
 13 **musician, is that a fair statement?**

14 **A I wouldn't want to brag but.**

15 **Q But your adept on multiple**
 16 **instruments; correct? Is that fair?**

17 **A Okay. Yeah, I guess so, yes,**
 18 **ma'am.**

19 **Q You and Derek Blythe have known**
 20 **each other for a long time?**

21 **A Yes.**

22 **Q Y'all went to school together**
 23 **when you were boys?**

Page 47

Page 49

1 giving lessons to.

2 **Q We won't name his name. So have**
 3 **you been tutoring anybody else in the last**
 4 **several years?**

5 **A Give me a number of last several**
 6 **years, last two years, three years?**

7 **Q Well, in the last year, have**
 8 **you tutored anybody?**

9 **A No.**

10 **Q You tutored Nicki in 2003;**
 11 **correct?**

12 **A Some, yes.**

13 **Q And did you tutor her in 2004?**

14 **A I don't -- she only took a**
 15 **handful of lessons.**

16 **Q Okay. And how much did she pay**
 17 **you?**

18 **A I think I charged her \$20 an**
 19 **hour.**

20 **Q Uh-huh.**

21 **A Which I wouldn't be good at it**
 22 **because she was interested and it would --**
 23 **you know, I would probably spend an hour**

1 **A Yes.**

2 **Q And does Derek Blythe play any**
 3 **instruments? Does he try?**

4 **A He was a very --**

5 **MR. BLYTHE: You said you were**
 6 **going to tell the truth.**

7 **Q (By Ms. Lindsey) Y'all are good**
 8 **friends?**

9 **MR. BLYTHE: He ain't going to**
 10 **hurt my feelings, I know the truth.**

11 **THE WITNESS: The cold hard**
 12 **truth? Derek marched with the trombone in**
 13 **the band.**

14 **Q (By Ms. Lindsey) And at that**
 15 **point --**

16 **A I haven't lied yet.**

17 **Q And at that point, were you**
 18 **playing the trumpet?**

19 **A Yes, I was.**

20 **Q And was this in middle school or**
 21 **high school?**

22 **A You joined the band in the 9th**
 23 **grade, so it would have been -- his first**

Page 50	Page 52
<p>1 year would have been our sophomore year</p> <p>2 because you were in beginner band in 9th</p> <p>3 grade, right. Okay. So --</p> <p>4 Q And you were in advanced band</p> <p>5 because of your prior experience in middle</p> <p>6 school?</p> <p>7 A We didn't have it like that, we</p> <p>8 had Jr. high that was 7th, 8th, 9th at that</p> <p>9 time, and then had a high school at -- so</p> <p>10 when I was a 9th grader and left to go to</p> <p>11 the field to practice, Derek was taking</p> <p>12 beginning and then got into the high school</p> <p>13 band his next year.</p> <p>14 Q Did he continue to march with</p> <p>15 the trombone?</p> <p>16 A He sure did.</p> <p>17 Q And did you continue to play the</p> <p>18 trumpet?</p> <p>19 A I did.</p> <p>20 Q And you play any other</p> <p>21 instruments at that time for the school?</p> <p>22 A In the band?</p> <p>23 Q Right.</p>	<p>1 was and Benjamin Russell High School.</p> <p>2 Q So you grew up in Alex City?</p> <p>3 A Correct.</p> <p>4 Q And I'm going to mark as 2 what</p> <p>5 I understand to be your responses to the</p> <p>6 questions that we asked of you. If you</p> <p>7 will look at page two?</p> <p>8 (Defendant's Exhibit 2</p> <p>9 was marked</p> <p>10 for identification.)</p> <p>11 You referenced the high school</p> <p>12 diploma at Benjamin Russell High School.</p> <p>13 Do you see that there at the top of page</p> <p>14 two?</p> <p>15 A Okay.</p> <p>16 Q And then I see there that you</p> <p>17 attended Auburn University?</p> <p>18 A Yes, I did.</p> <p>19 Q And while you were at Auburn,</p> <p>20 you received your BA; correct?</p> <p>21 A Yes.</p> <p>22 Q And what was your particular</p> <p>23 specialty, bachelor of arts in what?</p> <p>24 A Psychology.</p>
Page 51	Page 53
<p>1 A I played drums some in the jazz</p> <p>2 band that they had at school.</p> <p>3 Q And in your free time did you</p> <p>4 play guitar with a band of your friends?</p> <p>5 A When I was in high school?</p> <p>6 Q Uh-huh.</p> <p>7 A No.</p> <p>8 Q If I understood you earlier, you</p> <p>9 did have some experience in a band with I</p> <p>10 suppose friends when you were a teenager,</p> <p>11 is that correct?</p> <p>12 A Other than the school band?</p> <p>13 Q I might have misunderstood you.</p> <p>14 A We did, we played for a club</p> <p>15 meeting in Jr. high school when we were in</p> <p>16 7th grade. And it was the worst noise you</p> <p>17 have ever heard in your life, but it was</p> <p>18 fun and so we did.</p> <p>19 Q You were having a good time.</p> <p>20 What was the name of the school the junior</p> <p>21 and high school?</p> <p>22 A It would have been -- what is</p> <p>23 the name Alexander City Jr. High is what it</p>	<p>1 Q My husband did that as well.</p> <p>2 And did you play instruments when you were</p> <p>3 at Auburn?</p> <p>4 A I was going to play in the jazz</p> <p>5 band at Auburn. In intramural softball I</p> <p>6 was hit in the mouth with a softball and</p> <p>7 had had a problem with the embouchure and</p> <p>8 it took a long time for that to heal and</p> <p>9 that's how that wound that up so --</p> <p>10 Q Did you try the guitar or some</p> <p>11 other instrument you would play like drums</p> <p>12 and play in the --</p> <p>13 A They had someone for that and --</p> <p>14 Q And do you play the trumpet</p> <p>15 now?</p> <p>16 A Some.</p> <p>17 Q So did you pursue your musical</p> <p>18 interest at all while you were at Auburn?</p> <p>19 A I did play with some guys a few</p> <p>20 times when we were at school in Auburn.</p> <p>21 Q Was that the beginning of the</p> <p>22 Joshua Stone band?</p> <p>23 A Nope, that was still before</p>

(Pages 54 to 57)

15

Page 54

1 Joshua Stone.
 2 **Q Did the guys you referenced --**
 3 **did y'all ever consider yourselves part of**
 4 **a band with a name?**
 5 A Yes, we did.
 6 **Q And what was the name of that**
 7 **band?**
 8 A Imposter.
 9 **Q Imposter. And did y'all play at**
 10 **various places at Auburn?**
 11 A We played some places at Auburn
 12 a few fraternities, a couple of bars
 13 nearby.
 14 **Q Did you go to Montgomery?**
 15 A We just -- I can't remember if
 16 we -- I think we might have played in
 17 Wetumpka or something but, you know, it was
 18 -- it didn't do a whole lot. I mean it
 19 really didn't.
 20 **Q It was a good time, but it**
 21 **didn't grow into something?**
 22 A We were there to go to school
 23 that's why we were there but it was -- it

Page 55

1 was kind of like, I don't know, something
 2 to do, I guess.
 3 **Q It was how you spent your time**
 4 **when you weren't studying or attending**
 5 **class?**
 6 A Right, and you know, when I
 7 first got to school there, it was probably
 8 six months I didn't touch anything musical
 9 other than maybe my guitar just sitting
 10 around picking around but --
 11 **Q Was Derrick Blythe in college**
 12 **with you?**
 13 A Derrick Blythe was in college
 14 with me.
 15 **Q Did he come see your band?**
 16 A Yes, he did.
 17 **Q Now I see here on your response**
 18 **Defense Acquisition University and 101 IND?**
 19 A No, IND is the course title.
 20 **Q Is that training you received**
 21 **while you were at Miltope?**
 22 A Yes, it is.
 23 **Q And Property Administration**

Page 56

1 **Fundamentals on August 30th, 2002, is that**
 2 **also training you received at Miltope?**
 3 A That's part of the IND 101,
 4 that's just the title of the course.
 5 **Q Okay. When you received**
 6 **received your BA in psychology, did you**
 7 **attempt to pursue a job in that field after**
 8 **you graduated?**
 9 A When I got out of school I
 10 checked a couple of places for jobs, and I
 11 had a -- I had an offer to play some, which
 12 is what I did for a few years after that
 13 after I had gotten out of school.
 14 **Q And so is that when Joshua Stone**
 15 **came about?**
 16 A Nope, still not there.
 17 **Q So the offer you received**
 18 **shortly after you finished Auburn, what**
 19 **band were you playing in?**
 20 A I was hired to play in a band,
 21 it --
 22 **Q Which band was that?**
 23 A It was the Jeff Golden Band.

Page 57

1 **Q And where did the Jeff Golden**
 2 **Band play?**
 3 A Opelika.
 4 **Q Any other cities?**
 5 A No, pretty much a house band and
 6 he had a different song that was on the
 7 radio at that time so it was kind of like a
 8 possible thing and it never really -- we
 9 went and played at a Fanfare in Nashville
 10 so that was --
 11 **Q That's sound exciting.**
 12 A It was fun.
 13 **Q So after you -- how did your**
 14 **time with the Jeff Golden Band end, did you**
 15 **decide you needed to try something**
 16 **different?**
 17 A Yes, I did. And at that point
 18 in time I think was when I had applied
 19 for -- I had applied for a job with it was
 20 Alfa Insurance.
 21 **Q Okay. And did you work for**
 22 **Alfa?**
 23 A I went through six weeks of an

Page 58	Page 60
<p>1 eight week preemployment program and was 2 told in seventh week that I would -- that 3 they were sorry that they were going to 4 have to hire someone else for that. 5 Q Did they give you a reason why? 6 A That was the reason I was given. 7 Q Did that upset you? 8 A A little, hurt my feelings. I 9 was losing my mother at that time. My wife 10 and I were losing a child at that time. 11 Q You've experienced the death of 12 a child as well? 13 A She was four and a half months 14 pregnant and the baby had to be -- they had 15 to induce labor. 16 Q And did the baby die? 17 A Died. 18 Q And it was around that time then 19 that Alfa had said they weren't going to 20 hire you, and what did you do next? 21 A I tried to figure out what to do 22 at that point and that was around the time 23 -- around the time that -- well, can we</p>	<p>1 Alfa? 2 A Correct. 3 Q And that didn't work out but 4 they didn't really give you a reason from 5 what you just described; correct? 6 A Yes. 7 Q And during this time your wife 8 was having complications in a pregnancy 9 that resulted in the death of the fetus? 10 A Correct. 11 Q And at that time your mother was 12 already diagnosed with esophageal cancer in 13 '95? 14 A My mother was diagnosed on 15 January 14th and passed away February 16th. 16 Q Do you remember the year? 17 A That would have been in '95. 18 Q Where were you at that time that 19 three week around in '95, were you in Alex 20 City with her? 21 A With my wife and my mother, yes. 22 Q Yes, okay. So this was not a 23 time that you were traveling in a band?</p>
Page 59	Page 61
<p>1 pause there for just one second. Before 2 that, before Jeff Golden was where the 3 Joshua Stone was and when that was over 4 with was when we got to the -- you know, I 5 had gone to Alfa to work. That kind of 6 thing, Joshua Stone, was in between Jeff 7 Golden and that. 8 Q I got you. 9 A But could you ask that again, I 10 completely lost what was going on there. 11 Q Let me back up a minute so we 12 can get on the same page. 13 A Okay. 14 Q So at that some point, the Jeff 15 Golden Band no longer held your interest 16 and you moved on to Joshua Stone Band; 17 correct? 18 A Right. 19 Q And that ended in a lawsuit that 20 was resolved between you and Johnathan 21 Bloom? 22 A Right. 23 Q And then you pursued a job with</p>	<p>1 A No, not at all. I was going to 2 Alfa to study and take practice exams for 3 the insurance exam. 4 Q Uh-huh. 5 A And in fact, the day that they 6 induced labor and took our child, I was 7 sitting in there with my wife in the 8 hospital and I put my books studying down 9 to help her for whatever she needed when 10 she woke up. In the meantime my mother was 11 at home dying, so it was a pretty tough 12 time. 13 Q So when you had this 14 disappointing news from Alfa, did you 15 decide to take a break from seeking 16 employment because of these extenuating 17 circumstances you just described? 18 A I did, and that was around the 19 time that I was called for Rat Race. At 20 that time that was when they called was in 21 this couple of weeks around all of that. 22 Q When in this time frame did you 23 become a Liberty National Insurance</p>

(Pages 62 to 65)

17

Page 62

1 **salesman?**2 A After I was at Miltope the first
3 time.4 **Q Okay. Your first term of**
5 **employment with Miltope was a positive**
6 **experience for you; correct?**

7 A Mostly.

8 **Q The resignation letter that you**
9 **wrote reflected that you were pleased with**
10 **your time there, am I remembering that**
11 **correctly?**

12 A Yes.

13 **Q And you chose to resign because**
14 **you had another opportunity, I believe, is**
15 **referenced in the letter; is that correct?**

16 A Correct, closer to home.

17 **Q Closer to home. And while you**
18 **had been working at Miltope during that**
19 **first period, you were supervised by your**
20 **attorney's wife, Rhonda Blythe; correct?**

21 A My supervisor was Jim Pointer.

22 **Q Okay. At some point was Rhonda**
23 **ever your supervisor? If you can't**

Page 63

1 **remember that's okay.**2 A I -- I'll have to look and see
3 the dates and stuff, I don't know.4 **Q She is the one who recommended**
5 **to you that you seek employment at Miltope?**6 A She mentioned that. I had asked
7 her if she knew of any job and she
8 referenced that one.9 **Q And at that time when you asked**
10 **her about this, were you pursuing**
11 **employment with any other company?**12 A Not that I can recall, I mean, I
13 -- I think I -- I think I had gone to an
14 employment agency or something like that,
15 but I don't really remember, I don't.16 **Q Had something happened with The**
17 **Rat Race that led you to seek Rhonda's**
18 **advice to get a different job?**19 A No, it was pretty much -- I had
20 -- I had covered this in that aside that I
21 took earlier and I said that.22 **Q Is this when Sydney was born?**

23 A I wanted to give it a year and

Page 64

1 see what it was going to be, right, and see
2 what was going to happen. And when that
3 time started drawing near, I talked to them
4 and we -- you know, I think -- I think it
5 is time for me to go.6 **Q So the chronology was you gave**
7 **Rat Race a year and as the year came to a**
8 **close, you decided it was time to look for**
9 **something else. You asked Rhonda for her**
10 **advice, she suggested Miltope, and that's**
11 **where you ended up, is that correct?**

12 A Yes, that would be.

13 **Q Is there something else that**
14 **happened in there? In other words was**
15 **there some other place that you thought**
16 **about working or some other source of**
17 **income, some other experience?**18 A No, I -- I was just trying to
19 put the feelers out and see and she told me
20 about that and she wanted a resume and I
21 got one. And Mr. Pointer contacted me and
22 I went up for an interview. And at that
23 time -- actually at that time, I'm glad we

Page 65

1 kept talking about that, I had talked with
2 -- I had talked with Jeff Golden, who I had
3 played with before.4 **Q Right.**5 A And he had expressed an interest
6 in having a house band similar to what he
7 had had in Opelika but in Montgomery. And
8 I had kind of committed to that, and we had
9 been working on that. That is just exactly
10 right, and he was having a lot of trouble
11 getting a license for the club in
12 Montgomery, and so I was -- I was becoming
13 frustrated with that and not, you know,
14 when are we going to play, are we going to
15 do this or not, or do I have a job or do I
16 need to look else where.17 **Q Right.**18 A And he never could give an
19 answer because it was up to the city, you
20 know, he doesn't have control over that.
21 And so at that time, he came back and said
22 that he had gotten the license and it was
23 around the same time that Mr. Pointer had

Page 66

1 talked to me, so I got them going and then
 2 they found another drummer and I went to
 3 work at Miltope is sort of how that went.
 4 **Q Do you think that was the better**
 5 **decision for the financial standpoint?**
 6 A To go to Miltope?
 7 **Q Rather than play with Jeff**
 8 **Golden?**
 9 A Yes, I do.
 10 **Q And what was the opportunity**
 11 **that prompted you to resign from Miltope**
 12 **that first time?**
 13 A The first time?
 14 **Q Uh-huh.**
 15 A I had a friend in Alex City who
 16 owned an automobile dealership. He asked
 17 me if I was interested in a position there,
 18 and I told him that I would think about
 19 it. And I thought about it, and so I -- I
 20 tried that.
 21 **Q And what was that that**
 22 **interested you in the auto dealership as**
 23 **opposed to staying at Miltope?**

Page 67

1 A Closer to home, it was closer to
 2 home.
 3 **Q And so you tried it out?**
 4 A Yes, it was it was not quite
 5 what I thought it was.
 6 **Q What's the name of the auto**
 7 **dealership?**
 8 A Bice Motors.
 9 **Q I see you have it listed here in**
 10 **your response to number four, Brian Bice,**
 11 **is that who you worked with?**
 12 A Yes.
 13 **Q And were you working on**
 14 **commission there?**
 15 A We had a commission, and I think
 16 they had a small salary or a draw that you
 17 would work against.
 18 **Q And what was it about that**
 19 **experience that didn't work for you?**
 20 A It just -- it was not me, it was
 21 not me. We had a -- some misunderstanding.
 22 **Q About money?**
 23 A No, about a vehicle, and it

Page 68

1 just -- it just worked out better that we,
 2 you know --
 3 **Q Was it --**
 4 A -- separate.
 5 **Q Was it a vehicle that you were**
 6 **given the opportunity to use while you were**
 7 **working there?**
 8 A It was a vehicle that I was
 9 loaned by a different dealership while one
 10 that I had purchased prior to working there
 11 was being worked on. It was a big
 12 misunderstanding exactly.
 13 **Q He felt like you had gone to a**
 14 **competitor?**
 15 A Exactly.
 16 **Q So after you and Brian parted**
 17 **ways is that when you started working with**
 18 **Liberty National?**
 19 A Yes, it is.
 20 **Q Was that a positive experience?**
 21 A I enjoyed that. It was a lot of
 22 work, a lot of hours.
 23 **Q Uh-huh.**

Page 69

1 A But mostly I enjoyed it.
 2 **Q And were you making good money?**
 3 A I was doing pretty good.
 4 **Q And what prompted you to leave**
 5 **Liberty National Insurance?**
 6 A I was about to enter into a
 7 divorce at that time, and I asked for some
 8 time. And they don't really do that. If
 9 you are in sales you have to sell no matter
 10 what. And I'm -- so we separated, I guess
 11 you would call it. And I'm of course
 12 eligible for rehire, it's in my file with
 13 Liberty National, but I just had a lot on
 14 my plate with that.
 15 **Q Who was your primary contact**
 16 **there at Liberty National?**
 17 A At Liberty National, Eddie
 18 Milner.
 19 **Q You have him listed, and is**
 20 **Eddie still there?**
 21 A Yes, he is he's a district
 22 manager.
 23 **Q And you're still on friendly**

(Pages 70 to 73)

19

Page 70

1 terms with him?
 2 A Yes.
 3 Q Have you considered going back
 4 to him to work again?
 5 A I had thought about it.
 6 Q And what were your thoughts?
 7 A I just -- I don't know, I just
 8 had thought about it. And you know, it is
 9 an option, but I haven't -- I really can't
 10 do that right now.
 11 Q Why not?
 12 A Long hours, long hours.
 13 Q When you say long hours, can you
 14 give me a ball park reference?
 15 A Of the hours?
 16 Q Yeah.
 17 A Well, it would all together
 18 depend -- you could have clients that you
 19 could only meet after work and they got
 20 off work at 9:00 o'clock. You could have a
 21 client that you could meet like at 5:00
 22 o'clock. You could have a client that you
 23 have to meet them before they go to work.

Page 71

1 Q Uh-huh.
 2 A You might have to drive a great
 3 distance to meet them and that kind of
 4 thing, but that's everyday, all day, every
 5 day, and it's not that I mind work all day,
 6 every day. It's just that I can't take
 7 care of everything I have to take care of
 8 and be gone all day, every day. I can't do
 9 that.
 10 Q So you need a 9:00 to 5:00
 11 o'clock; right?
 12 A Right, now what I'm doing is the
 13 best thing I have found to work for me.
 14 Q What's that?
 15 A I work two days a week like I
 16 fireman would 24 hours, almost two days a
 17 week and the rest of the week I am home.
 18 Q When you say you work two days a
 19 week like a fireman would, 24 hours, are
 20 you talking about the work you have done
 21 with the band?
 22 A Yes, and you know, a lot of
 23 times it is not like that I mean.

Page 72

1 Q That's about \$500 a week, isn't
 2 it, if you played twice a week and it is
 3 \$250 a show?
 4 A Well, you know, there are
 5 expenses that one incurs when being in the
 6 profession and maintenance and up keep of
 7 instruments and that kind of thing. It
 8 does dig into it a little bit, but it's
 9 helping.
 10 Q And so you say this is what
 11 works for you, right, what you just
 12 described that particular?
 13 A At the moment, yes.
 14 Q And prior to the time that you
 15 were playing twice a week with The Cold
 16 Hard Truth, did you have any routine that
 17 was allowing you to bring income in for the
 18 family?
 19 A A friend of mine has a band, I
 20 would play with them some but nothing that
 21 was totally regular that kind of thing.
 22 Q Do you report all of this income
 23 to the IRS on your tax forms?

Page 73

1 A I would have to first receive a
 2 1099 from them, I believe, and I don't
 3 think -- I only do it -- I don't know how
 4 much -- I've talked to people, and I don't
 5 make enough I think to file.
 6 Q So there is no record that would
 7 show precisely how much you have made over
 8 the last several years playing with the
 9 bands?
 10 A I --
 11 Q I guess maybe your bank account?
 12 A No, that --
 13 Q Sometimes it is cash, isn't it?
 14 A No, usually what I get is a
 15 check so I will -- like this year, since I
 16 have been doing this with Derek?
 17 Q Uh-huh.
 18 A This year, I will -- I will
 19 probably get a 1099 but now as far as years
 20 prior to that, I have been, you know, a
 21 single parent, taking care of my father,
 22 doing all my activities with my daughter,
 23 and I still do that every week every day.

Page 74

1 And you know, this -- I got off track, I'm
2 sorry.

3 **Q What activities does your
4 daughter do?**

5 A It's playing soccer now, the
6 last two years she did cheer leading.

7 **Q Uh-huh.**

8 A She plays softball.

9 **Q Does she play any instruments?**

10 A She's working on that. She
11 thinks she is going to be a drummer too,
12 but I'm trying to get her influenced into
13 playing something like flute, harmonica,
14 saxophone where you can pick it up and walk
15 with it.

16 **Q That's a good idea.**

17 A I learned the hard way. My
18 mother always used to tell me one day you
19 are going to wish you had played harmonica,
20 I think about every time.

21 **Q Slip it in your pocket and go.**

22 A I think about it every time I
23 have to set my drums up and tear it down.

Page 75

1 I think about my mother every time and
2 that's a wonderful thought to have when you
3 are out there doing that.

4 **Q We all learn as we grow up our
5 mothers were right about just everything,
6 at least I have found that to be true. I
7 have been trying to go through all of your
8 background in terms of your experience,
9 your income you have been able to earn, the
10 different qualifications you have. Have we
11 covered everything or is there something
12 else that you need to add for accuracy?**

13 A I got kind of lost after we got
14 to number four, let's see, that was the Jim
15 Pointer.

16 **Q Right. And we talked about Bice
17 Motors, Liberty National, and we have not
18 yet discussed your second term of
19 employment with Miltope but we will.**

20 A Okay.

21 **Q Is there any other employer
22 other than the bands you have already told
23 me about?**

Page 76

1 A No, I don't --

2 **Q Now why did you decide to go
3 back to Miltope?**

4 A I had talked to Rick Collins,
5 who was, at that point in time, the product
6 support supervisor. Rick had worked there
7 before when I was there. Rick and I were
8 good friends. He had told me that they
9 might need someone for the cab reporting
10 position, and I asked him to -- if there
11 was a possible way I could be considered
12 for that, and I think he spoke to
13 Mr. Crowell about that. And after he had
14 spoken to Mr. Crowell about that,
15 Mr. Crowell and I kind of carried it from
16 there.

17 And the thing that I liked about
18 it is at Liberty National you carried your
19 job in your head with you every where you
20 went every day. The job at Miltope could
21 create some space between work and home.
22 One of the things that it afforded me was
23 one that although I did think about it some

Page 77

1 at home, it was not as -- I didn't have
2 anyone coming up and asking me how many
3 parts were in that delivery order when I
4 was at home so it was -- it was a much --
5 how can I say this, a little less taxing.
6 And I was very familiar with the computer
7 system and how all of that worked having
8 worked there before, so it was perfect.

9 **Q The transition went well
10 starting back?**

11 A Yes, very much so.

12 **Q And you got along well with
13 Mr. Crowell?**

14 A Yes.

15 **Q And you got along well with
16 Brian Burkhead?**

17 A Yes.

18 **Q And you got along with Gabe
19 Riesco?**

20 A Yes.

21 **Q Were there any other folks that
22 you reported to other than Gabe and Brian?**

23 A John Stokes was product support

(Pages 78 to 81)

21

Page 78

Page 80

1 supervisor in between Rick Collins and
2 Brian Burkhead.

3 **Q Did you get along well with**
4 **John?**

5 A Most of the time, yes.

6 **Q And you received good**
7 **performance evaluations, didn't you?**

8 A I believe so.

9 **Q And you were happy with your**
10 **work and performing well, is that fair to**
11 **say?**

12 A When I -- yes, when I went back
13 when I started there I was happy with that.

14 **Q Was there ever a time either the**
15 **first part, first term of employment with**
16 **Miltope or second that you were unhappy**
17 **with your work there?**

18 A Yes.

19 **Q Was it the first term or second?**

20 A Can we speak off the record for
21 a second, please? What do we do, what do I
22 need to say?

23 **Q (By Ms. Lindsey) Well, I'd**

1 anything because that has been a lot of
2 years ago.

3 **Q Would you want to be reinstated**
4 **at Miltope today?**

5 A I would have, I would have loved
6 to have gone back to work there because it
7 was all it seems to me like a big -- any
8 way.

9 **Q Would you want to do that now**
10 **knowing that you'd have to be there from**
11 **9:00 to 5:00 five days a week or probably**
12 **8:00 to 5:00?**

13 A No.

14 **Q Considering your commitment to**
15 **your family, you would decline that**
16 **opportunity then?**

17 A I -- I just -- I don't feel that
18 I was treated fairly in this, and I would
19 probably have a huge problem going back now
20 just because of all of what's happened with
21 that.

22 **Q Aside from that, it seems to me**
23 **based on what you said today that you are**

Page 79

Page 81

1 **rather it not be off the record.**

2 A No, I was just going to ask a
3 question. I mean, we all have things that
4 we don't necessarily like, but I mean as
5 far as being happy, I was generally happy
6 if you would like to use that term.

7 **Q Okay.**

8 A But you know --

9 **Q In other words, when you left**
10 **Miltope the first time the reason was**
11 **solely to get closer to home?**

12 A Well, I mean there were a lot of
13 factors involved that, well, I mean the
14 potential to make more money by not having
15 so much expense, maybe there were a lot of
16 factors but mainly closer to home,
17 potentially more money.

18 **Q You never had conflicts with**
19 **anyone that were troubling to you?**

20 A I think there was one gentleman
21 in contracts that we had back and forths
22 several times, but I mean, it doesn't keep
23 me up at night worrying about it or

1 very committed to being as available as you
2 can for your father and your daughter, is
3 that a fair statement?

4 A Yes.

5 **Q And considering that commitment**
6 **that you have to your father and daughter,**
7 **I'm understanding your testimony to be that**
8 **it works best for you to work only on a**
9 **limited work week, like the two full days**
10 **playing in Cold Hard Truth, am I**
11 **understanding your testimony right?**

12 A Of the options that are
13 available to me right now, yes.

14 **Q And isn't it fair to say that if**
15 **you were to go back to Miltope or a place**
16 **like it that that would significantly**
17 **impact the time with your father and your**
18 **daughter?**

19 A It would impact the time I have
20 with my father and daughter.

21 **Q You would not be able to**
22 **participate as much in her activities as**
23 **much after school; correct?**

Page 82

1 A I wouldn't say that because, you
2 know, a lot of places encourage you to be
3 involved in your child's activities and
4 plan your day around some of those things
5 to make time for that.

6 **Q Your father would be alone all
7 day while you were at work?**

8 A If I were to -- if I were to
9 accept a full-time position, I would
10 probably hire someone to stay with my
11 father if the situation presented itself.

12 **Q If I understand your father's
13 situation correctly, you've been faced with
14 having to choose between putting him in an
15 assisted living or skilled nursing facility
16 or provide what care you can with the help
17 of Hospice or other support over these
18 years, is that a fair description of the
19 struggle you have experienced over the last
20 three years?**

21 A When we had Hospice for the
22 first year when they had diagnosed him with
23 a form of cancer, with lung cancer. And

Page 83

1 after he had been on Hospice for that year,
2 they did a CAT scan and it revealed that --
3 what the doctor had thought was a tumor had
4 mysteriously disappeared and all we can --
5 all we can attribute that to is hopefully
6 it was a miracle. And that's the only way
7 I can look at it is that being a miracle.

8 And then I was torn between two
9 things at that point that I had lost my job
10 over this whole situation and that was --
11 that, you know, I was so glad that my
12 father did not have cancer, trust me, I am
13 so glad that it -- or if he did, it's gone
14 but there was I was thinking -- see, my
15 mother died with cancer, diagnosed and died
16 30 days later -- we were burying her 32
17 days later, so when that doctor told me
18 that my father -- and he told me this in
19 July of that year that my father had cancer
20 and three to six months is all he told me.

21 And all I could see that what a
22 short time I had with my mother and didn't
23 even really know it was all -- it happened

Page 84

1 so fast I had no idea it would be that
2 fast. And when my father was diagnosed I
3 had wanted to spend some time with --
4 looking back on my mother even though I was
5 there a good bit of the time, I didn't feel
6 like I spent as much time with her. I
7 wanted to spend -- five more minutes would
8 have been great, just anything.

9 And with my father, I was an
10 only child. I had my daughter, I don't
11 have any brothers or sisters, the closest
12 relatives I have are cousins that I didn't
13 know what to do.

14 **Q They don't live nearby, the
15 cousins?**

16 A I have some further -- some
17 cousins that are like -- I don't know, we
18 don't -- I wouldn't even know where they
19 are some of them are.

20 **Q And at this point you were
21 divorced so you didn't have Malissa for
22 help; is that correct?**

23 A True.

Page 85

1 **Q Did you ever get to see these
2 tests, these documents that the doctor
3 generated both in July and November about
4 your father's health?**

5 A They -- they did a -- and I
6 don't know if I would understand it if I
7 did see it, but they did a scope that they
8 went into his lung somehow or another and
9 the doctor told us that he just could
10 not -- it was so deep in the bottom of the
11 lobe of the lung that he couldn't even get
12 those minute instruments to it. And he
13 said that it -- it's -- we don't know how
14 long one of the doctors referred to three
15 to six months, but I haven't actually sat
16 down and read those, no, because I don't
17 think I would understand them any way. I
18 went by what the doctors had told me.

19 **Q Is it your testimony that they
20 told you for certain in July that it was a
21 malignancy?**

22 A They said a tumor, they did
23 not --

(Pages 86 to 89)

23

Page 86

1 **Q** So it could have been benign?
 2 **A** Well, I mean it could have been.
 3 **Q** Let me show you what I have
 4 marked as three.
 5 (Defendant's Exhibit 3
 6 was marked
 7 for identification.)
 8 And this is what I'm going to
 9 call a composite exhibit of records from
 10 Dr. Vincent Law, who treated your father.
 11 And the first page of Exhibit 3 is
 12 designated at the bottom Bailey, Miltope
 13 SR 00560, and do you see circled on that
 14 page negative for malignancy?
 15 **A** Yes.
 16 **Q** And do you recognize the top of
 17 the page identifying information for your
 18 father as the patient, date of birth,
 19 social? I don't know if the social is
 20 actually on there, the date of birth is.
 21 Do you see it at the top?
 22 **A** Yes.
 23 **Q** Okay. And --
 24 **A** What -- could I ask one question

Page 87

1 since you have researched this?
 2 **Q** Sure.
 3 **A** What is the under the right-hand
 4 side, what does the REG stand for?
 5 **Q** Well --
 6 **A** It says registered doctor, is
 7 that what it means?
 8 **Q** I assume that's when he was
 9 admitted 6/30/03 when your father was
 10 admitted for pneumonia to the hospital,
 11 does that ring a bell?
 12 **A** Yes.
 13 **Q** I think that's what they are
 14 referring to.
 15 **A** That's when they found this
 16 mass.
 17 **Q** That's what I understand to be
 18 true from reviewing the records from your
 19 father. As I understand this record, it
 20 was run on July 8th, 2003 that's referenced
 21 in the top left of the page?
 22 **A** Correct.
 23 **Q** And so having reviewed this

Page 88

1 record it's, you know, my question -- the
 2 reason for my question, and I hope it is
 3 understandable to you, apparently the
 4 doctor knew it was negative for malignancy
 5 in July of '03. That's what this record
 6 reflects, do you agree?
 7 **A** Well, you know, having been that
 8 this is the first time I have seen this, I
 9 --
 10 **Q** I know and it has been three
 11 years too and so if you need to think back
 12 that's fine.
 13 **A** Just without contrast, okay.
 14 On --
 15 **Q** Would you like to look at all of
 16 these pages for a few minutes, or do you
 17 want to focus on one question at a time?
 18 You may have already clarified this,
 19 Mr. Bailey, but my question is based on
 20 having looked at these documents,
 21 specifically the first one, are you sure
 22 that you were told in July that your father
 23 was diagnosed with a malignant cancer?

Page 89

1 **A** I was told he had cancer, I was
 2 not told whether it was malignant. My
 3 thought on cancer there was that he had
 4 cancer that's -- I did not know if it was
 5 malignant or not. They said they found a
 6 mass in his lung, and he told me that he
 7 might have three or six months that we
 8 might have to bring him back from time to
 9 time have the fluid drawn out of his lung
 10 that was going to collect in there because
 11 of the mass obstructing the flow of the
 12 lung.
 13 **Q** Was that also related to the
 14 pneumonia he had just experienced?
 15 **A** Yes, he said that was directly
 16 related to that, and he said it would
 17 probably happen again.
 18 **Q** And they wanted to monitor him;
 19 right?
 20 **A** Right.
 21 **Q** In fact, he had some therapy
 22 after he was discharged from the hospital
 23 to try to help him recover from the

Page 90

1 pneumonia?

2 A Right, he takes breathing
3 treatments now.

4 Q And that's partly because he
5 also has emphysema; correct? It is listed
6 on the second page.

7 A Yeah, they are listed back here,
8 all of the problems that are wrong.

9 Q Emphysema and COPD noted that's
10 on page SR 00574?

11 A Okay.

12 Q And the reason I bring that up
13 is his breathing treatments would have been
14 related in part to his diagnosis?

15 A Breathing treatments would be
16 related to, yeah, the diagnosis of and
17 you're saying that did the diagnosis of
18 nonmalignant cancer however you -- I'm
19 getting lost in this medical stuff. It is
20 confusing me.

21 Q We're not doctors. Let's back
22 up. He had emphysema before he got
23 pneumonia; is that correct?

Page 91

1 A I would -- I don't know.

2 Q Don't remember?

3 A No.

4 Q But he is still on breathing
5 treatments today, is that your testimony?

6 A Yes.

7 Q And as you recall the follow up
8 care that he received, it included physical
9 therapy, I suppose you might call it. Was
10 it physical therapy in addition to
11 breathing treatments?

12 A At that point in time he -- he
13 was at home I think -- no.

14 Q Do you recall?

15 A It's hard to remember that.

16 Q Do you recall a health care
17 provider visiting him at home to check his
18 stats and to monitor him?

19 A Not before Hospice started
20 coming.

21 Q Okay. And when Hospice -- when
22 he became part of the Hospice program he
23 was visited on a regular basis by skilled

Page 92

1 staff to check?

2 A Skilled staff to check his stats
3 and after that there was someone that came
4 and helped, you know, take care of his
5 daily needs and that kind of thing, they
6 would usually offset.

7 Q Right and he also received
8 chaplain care and volunteer help; right?

9 A Right.

10 Q And these individuals provided
11 support for him as he was recovering from
12 the pneumonia, is that what you recall?

13 A No, they were -- they didn't
14 come until later after they had admitted
15 him into the Hospice program.

16 Q Do y'all want to stop for a
17 lunch break? There are some things we have
18 to cover, obviously, to get through these
19 medical things about your dad. We can do
20 some more of that now and take a break and
21 regroup in about an hour?

22 THE WITNESS: Which would you
23 prefer?

Page 93

1 MR. BLYTHE: If we pressed on it
2 would still be more than an hour, wouldn't
3 it?

4 MS. LINDSEY: Yeah.

5 MR. BLYTHE: I guess we will
6 stop and eat lunch.

7 (A recess was taken.)

8 Q (By Ms. Lindsey) We're back on
9 the record after our lunch break.
10 Mr. Bailey, during the break did anything
11 occur to you that you want to add now to
12 clarify or correct any of your testimony
13 this morning?

14 A I wanted to address the
15 questioning you had regarding the initial
16 diagnosis of my father in seven of 03.

17 Q I missed the last part.

18 A Seven of '03.

19 Q Okay. Did you have a
20 clarification?

21 A Okay. You were referring to and
22 I have got to find where I put that.

23 MR. BLYTHE: It was Exhibit 3?

(Pages 94 to 97)

25

Page 94

1 THE WITNESS: Yeah, I know it
2 was.
3 MR. BLYTHE: Look underneath
4 there, make sure the ones with the blue
5 stickers stay here with the court
6 reporter.
7 THE WITNESS: There one --
8 **Q (By Ms. Lindsey) I tried to give**
9 **your lawyer a copy of everything so you can**
10 **have the copy.**
11 A I have Exhibit 1, Exhibit 2.
12 **Q Looking for Exhibit 3?**
13 A Yes.
14 **Q I don't see the original, but**
15 **here is another copy.**
16 A You were asking me about the
17 malignancy or not, could -- is there any
18 way to read that question back.
19 MS. LINDSEY: Yeah, can you read
20 it back for me?
21 (Record read.)
22 THE WITNESS: What I was told
23 during that time that he was in the

Page 95

1 hospital I think that the time frame was
2 ten days --
3 **Q Uh-huh.**
4 A -- roughly, they had found a
5 mass and due to his age and health was
6 deemed inoperable. It still caused like --
7 you had referred -- it was going to be --
8 have the causation of pneumonia to recur
9 that they had thought and let's see, the
10 reason they didn't do the surgery is
11 because between him and the pulmonary
12 doctor that he wouldn't survive the surgery
13 because it was such an invasive procedure.
14 Now I don't profess to be a
15 doctor, I don't know -- the only thing that
16 went into my mind when he said mass in lung
17 was he did refer to it being cancer. Now I
18 don't know if the scope that they did after
19 that made it apparent that it was not
20 malignant or it was malignant, I have no
21 earthly idea. But I do know that part of
22 the suggestion of that point and see I
23 didn't understand how the Hospice and that

Page 96

1 sort of thing worked, but I thought that we
2 needed to see how everything went and see
3 if that was going to be what needed to be
4 done. So I mean --
5 **Q If you will look at the last**
6 **page of this Exhibit -- is that the end of**
7 **your clarification?**
8 A I think so.
9 **Q I don't want to interrupt you,**
10 **but it is hard sometimes to tell when you**
11 **finish so let me know if I interrupt you.**
12 **At the very last page, the last sentence of**
13 **that first paragraph, his son wishes for no**
14 **aggressive measures. Do you see that part?**
15 A Right.
16 **Q Is that the time period where**
17 **y'all were discussing what could and**
18 **couldn't be done in terms of whether the**
19 **mass was operable and what kind of care**
20 **your dad needed?**
21 A The doctor had told me that he
22 did not feel he would survive any kind of
23 aggressive invasive surgery.

Page 97

1 **Q And that's what that means as**
2 **far as you know?**
3 A As far as I know.
4 **Q And there was never a discussion**
5 **of radiation therapy or chemotherapy;**
6 **correct?**
7 A No, I don't think so.
8 **Q Up of the upper part of this**
9 **paragraph second sentence, he is to be**
10 **discharged to Chapmans Healthcare for a 21**
11 **day stay for physical therapy. Do you see**
12 **that part?**
13 A Yes, I do.
14 **Q Do you remember that now**
15 **reviewing these records?**
16 A Yes, I do.
17 **Q And I believe that that was the**
18 **time that he was given therapy, physical,**
19 **therapy to help him recover from pneumonia,**
20 **is that what you recall?**
21 A Right.
22 **Q That is correct. And I believe**
23 **you said before the break that you and the**

Page 98

1 doctor discussed a plan that would allow
 2 for some monitoring over the section of
 3 three to six months, is that right?
 4 A He had told me that if the
 5 pneumonia-type symptoms come back, we would
 6 probably have to do what's called a
 7 thoracotomy, which is to draw fluid out of
 8 the lung manually using a large needle.
 9 Q You wouldn't be able to spell
 10 thoracentesis, could you?
 11 A I can try and see, that's the
 12 other thing, you know, I -- I don't know
 13 how to spell it. I would imagine it would
 14 start with a --
 15 Q T-h --
 16 A Thor would be the mid to of the
 17 body.
 18 Q But the process?
 19 A T-h-o-r would be the first part
 20 of it if you want to look it up.
 21 Q The process of it would be the
 22 removal of fluid from the lung?
 23 A Right.

Page 99

1 Q And did they have to do that
 2 process?
 3 A I don't think they did.
 4 Q So you have reported to me how
 5 it was when you and the doctor discussed
 6 this, the doctor couldn't -- that he would
 7 not survive an invasive process but they
 8 would need to put the needle in the lung
 9 and --
 10 A That was done the very first
 11 time, I mean, during that ten days when he
 12 was in the hospital they did that.
 13 Q Yeah, they did, I remember that
 14 now.
 15 A They did that. The issue was to
 16 cut him open and take this growth out that
 17 was what was the aggressive procedure
 18 because they thought they needed to get in
 19 there and take that out. And in fact, as
 20 far as a biopsy, the doctor had told me
 21 that he could -- he barely could even get
 22 to it. Now I don't know, do you have
 23 anything other than that piece of paper

Page 100

1 saying that it was not malignant and what
 2 means that they deemed necessary to say
 3 that it was not malignant because I had not
 4 seen the actual --
 5 Q Well, for example, look at the
 6 second page of this exhibit that's got 574
 7 at the bottom right-hand corner?
 8 A Okay.
 9 Q Number three under impression,
 10 no sign of malignant tumor, do you see
 11 that?
 12 A Okay.
 13 Q And this exam date was a year
 14 later 1/11/04?
 15 A Okay. That was the date that he
 16 came off of Hospice, this CAT scan and the
 17 exam that was done. The CT was done to be
 18 able to re qualify him for Hospice because
 19 he had lived a year. Hospice is generally
 20 a year and when we got this, we couldn't do
 21 anything. It has got to be a miracle,
 22 there is no other way it had gone away by
 23 -- they were worrying about it growing and

Page 101

1 causing pneumonia again and here it is a
 2 year later, and it is gone.
 3 Q Were you concerned that if he
 4 was not qualified for Hospice care that he
 5 would suffer from that lack of care?
 6 A No, because during the period of
 7 time that Hospice was coming, I really got
 8 in there and learned a lot of the things
 9 that they did, and we do have doctors
 10 visits where we check things. I have a
 11 blood pressure monitor at the house. He
 12 has an oxygen machine. He has a breathing
 13 treatment machine. I get all of his
 14 medication through the Veteran
 15 Administration, I mean he is retired almost
 16 29 years in the Marine Corps so --
 17 Q He was a gunnery sergeant?
 18 A Gunnery sergeant.
 19 Q My brother has just obtained
 20 that same position so did you ever -- tell
 21 him --
 22 A Hey.
 23 Q Did you ever consider going into

(Pages 102 to 105)

27

Page 102

1 **the military with your dad's influence?**
 2 A I had thought about it. Looking
 3 back on it, I sometimes wish I had, but you
 4 know, that's a very, very respectable
 5 thing.
 6 Q When we were talking earlier
 7 about your college, I meant to ask you did
 8 you ever consider majoring in music?
 9 A I did, I minored. I have a
 10 minor in music or had enough hours to
 11 qualify for a minor in music.
 12 Q Did anyone discourage you from
 13 that?
 14 A Sometimes my dad said I
 15 shouldn't do that, I should probably do
 16 something different but --
 17 Q If you'll look on page 576 of
 18 this exhibit several pages in.
 19 A Okay.
 20 Q And at the top of it is in bold
 21 Temple Medical Clinic, do you see that
 22 page?
 23 A Correct, yes, I do.

Page 103

1 Q It appears the date of this exam
 2 was 11/06/03, do you agree with that?
 3 A Yes, I do.
 4 Q So if you look towards the
 5 bottom there is a dictation showing the
 6 results of the exam, do you see that
 7 portion of the document?
 8 A I don't know what an infiltrate
 9 is right lower lobe infiltrate, what is
 10 that?
 11 Q I'm not a doctor either, I
 12 assume it is referring back to the
 13 pneumonia. It says here that there was an
 14 issue with his lung that was resolved, do
 15 you see that?
 16 A I would be scared to answer
 17 that. I do see that, but I would be -- I
 18 would like to know what that meant before I
 19 say that what had or had not been
 20 resolved. Does infiltrate mean fluid that
 21 was taken off or which that could be or
 22 does it mean mass?
 23 Q Why don't I ask you a different

Page 104

1 question. Do you remember going with him
 2 to this appointment?
 3 A Yes, I do.
 4 Q And at the appointment did you
 5 discuss with the doctor your father's exam
 6 results?
 7 A I did.
 8 Q And did you learn that your
 9 father's pneumonia had resolved itself and
 10 there was not a sign of any additional
 11 infection or sign of pneumonia? Do you
 12 remember discussing his exam that day?
 13 A I remember discussing with the
 14 doctor that his pneumonia symptoms might
 15 have gotten better, but I don't think we
 16 discussed anything any further than that.
 17 My dad was doing much better, and it was --
 18 you know, well, no, I don't recall. I
 19 don't really remember this as far as the --
 20 I remember going and taking him to the
 21 appointment, but I don't --
 22 Q That's okay. I'm only asking
 23 for your memory.

Page 105

1 A Yeah.
 2 Q So you don't remember discussing
 3 his health then, all right. Let me ask you
 4 to go back to your Exhibit 2, your
 5 interrogatory responses, you can put aside
 6 the medical documents. Could you look at
 7 the page of your interrogatories that has
 8 the answer to number 12?
 9 A Okay. Number?
 10 Q Answer to number 12?
 11 A 12.
 12 Q We talked this morning about the
 13 disillusion of the LLC with Johnathan Bloom
 14 and that's referenced in that answer. Do
 15 you remember that testimony?
 16 A Yes.
 17 Q I want to know a little bit more
 18 about the Buddy McCorkle matter, you can --
 19 I just only have one or two questions about
 20 it?
 21 A Okay.
 22 Q It says there is a breach of
 23 contract claim, is that what it was?

Page 106

1 A Yes.
 2 **Q And were you accused of having**
 3 **breached the contract?**
 4 A No.
 5 **Q You accused him of that?**
 6 A Exactly.
 7 **Q And did it involve money that**
 8 **you felt you were owed?**
 9 A Yes.
 10 **Q Okay. And that was related to**
 11 **a music --**
 12 A Yes.
 13 **Q -- venture? Okay. And is the**
 14 **same with respect to Mike O'Brien?**
 15 A Yes.
 16 **Q So in the Mike O'Brien dispute,**
 17 **you claim that Mike owed you some money**
 18 **regarding a music venture?**
 19 A Yes.
 20 **Q And did the McCorkle and O'Brien**
 21 **matters resolve in your favor?**
 22 A I think both of them did, I
 23 don't think one of them was ever collected,

Page 107

1 still.
 2 **Q Let me ask you about your dad a**
 3 **little bit more. According to the records**
 4 **I have seen, his faith is Presbyterian; is**
 5 **that correct?**
 6 A Yes, it is.
 7 **Q Were you raised in the**
 8 **Presbyterian church?**
 9 A Yes.
 10 **Q Do you attend church today?**
 11 A On occasion.
 12 **Q What church do you attend on**
 13 **occasion?**
 14 A The last one I attended was the
 15 Arbor.
 16 **Q Is that in Alex City?**
 17 A Yes.
 18 **Q Does Sheila attend church?**
 19 A No.
 20 **Q And is your father at a stage in**
 21 **his health where he cannot attend church?**
 22 A Please let me rephrase that no,
 23 we went -- easter was the last time we

Page 108

1 went.
 2 **Q Did y'all go to Arbor?**
 3 A No.
 4 **Q Where did you go for Easter?**
 5 A Hackneyville Baptist Church,
 6 H-a-c-k-n-e-y ville?
 7 **Q You plan on going back to**
 8 **Hackneyville Baptist Church?**
 9 A At some point, yes.
 10 **Q When you and Sheila get married,**
 11 **do you expect to attend that particular**
 12 **church rather than the Arbor?**
 13 A I'm not sure, I'm not sure,
 14 maybe Children's Harbor. We had talked
 15 about that, that's on Highway 63 around
 16 Kowliga.
 17 **Q Do you need him to spell that?**
 18 A Children's Harbor,
 19 K-o-w-l-i-g-a.
 20 **Q Also I noticed in the background**
 21 **on your dad he at least used to smoke**
 22 **cigarettes, does he currently smoke**
 23 **cigarettes?**

Page 109

1 A Occasionally.
 2 **Q Do you smoke cigarettes?**
 3 A Yes.
 4 **Q Do you smoke in the house?**
 5 A Yes.
 6 **Q Does Sheila have a profession?**
 7 A Yes.
 8 **Q What does she do?**
 9 A She works for a company called
 10 Sigma in Alexander City.
 11 **Q Is it related to insurance?**
 12 A No.
 13 **Q What is that?**
 14 A It's a cast pipe company.
 15 **Q What does she do there?**
 16 A She is kind of the -- she's
 17 working into the human resources position,
 18 she started there about a month and a half
 19 ago.
 20 **Q Where is your ex-wife Malissa**
 21 **now?**
 22 A Bay St. Louis, Mississippi.
 23 **Q Was that affected by Katrina?**

(Pages 110 to 113)

29

Page 110

1 A Very much so.
 2 **Q Do you happen to know her phone**
 3 **number there?**
 4 A I've got her cell phone number,
 5 she doesn't have a phone.
 6 **Q Do you remember her cell phone**
 7 **number?**
 8 A I have to look in my phone and
 9 get it, do you need it?
 10 **Q I can ask your lawyer for it if**
 11 **I need it.**
 12 A Okay.
 13 **Q I'd like you to go to the next**
 14 **page of the interrogatories we were just**
 15 **looking at. I want to ask you about number**
 16 **14, you have a list of names of people that**
 17 **you say have knowledge of the allegations**
 18 **in the complaint. I'd like to ask you**
 19 **about Rick Collins, what does he know?**
 20 A Rick was the supervisor when I
 21 was hired there. He would know personal
 22 information as far as like my work ethic
 23 and that type of thing.

Page 111

1 **Q I don't think your work ethic is**
 2 **going to be challenged in this case, you**
 3 **got good reviews, didn't you?**
 4 A I don't think that would be an
 5 issue.
 6 **Q Does Rick have information about**
 7 **the allegations you have made concerning**
 8 **the FMLA?**
 9 A I haven't spoken to him about
 10 it.
 11 **Q John Stokes?**
 12 A John was the supervisor after
 13 Rick left.
 14 **Q And he wouldn't have any**
 15 **information about your allegations**
 16 **concerning FMLA?**
 17 A I don't think so.
 18 **Q Is that correct?**
 19 A No.
 20 **Q Would either of them have any**
 21 **negative information about Miltope that you**
 22 **think would help your case?**
 23 A I don't think so.

Page 112

1 **Q What about Doug Snell, what does**
 2 **he know?**
 3 A Doug, I met Doug in the smoking
 4 area we were just --
 5 **Q He's another Miltope employee?**
 6 A Yes.
 7 **Q And what did y'all talk about?**
 8 A I thought these -- what did we
 9 talk about? Him being a helicopter pilot
 10 and being in the army.
 11 **Q Does he have any information**
 12 **related to the allegations about the FMLA I**
 13 **was asking you about Doug Snell just to see**
 14 **if he has any information about the**
 15 **allegations you have made concerning FMLA?**
 16 A Probably not.
 17 **Q What about Rhett Perry?**
 18 A Rhett Perry, Rhett was -- I
 19 think in the shop in the shop.
 20 **Q And what would Rhett know that**
 21 **could relate to claims you have made in**
 22 **this case?**
 23 A Probably the situation with my

Page 113

1 father's health because I was friends with
 2 Rhett and I did talk to Rhett so he would
 3 have known that.
 4 **Q Did y'all talk on smoke breaks**
 5 **or at lunch?**
 6 A No, just in passing.
 7 **Q And did you confide in Rhett**
 8 **about your father's illness?**
 9 A No, I confided mainly in Brian
 10 Burkhead and Gabe Riesco, that's who I --
 11 **Q Were you fairly private at work**
 12 **in terms of your personal affairs?**
 13 A Probably not, I like to talk to
 14 everybody. I enjoyed my job I -- you know,
 15 I was friends with everyone there, I
 16 thought, and you know, I had no reason to
 17 just be (indicating), you know, notice that
 18 I was saying straight to the point.
 19 **Q Doing your gesture?**
 20 A Gesturing straight to the point.
 21 **Q From what you said, let me ask**
 22 **you, I take it you also felt that everyone**
 23 **was friendly with you?**